IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.719 OF 2006

M/s. Excel Tapes ..Petitioner.

Vs.

Som Distileries Pvt. Ltd. ..Respondent.

....

Mr. C.M. Kothari for the Petitioner.
Mr. Milind Wasudeo i/b R. Ravindran for the Respondent.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

19th April, 2007.

P.C. :

1. The Company Petition has been instituted on the foundation of a decree passed by the Civil Judge, Senior Division at Daman on 28th February, 2003 in the amount of Rs.94,200/- together with interest at the rate of 21% per annum from 3rd February, 2000 till the payment of the outstanding dues.

2. On behalf of the Respondent learned counsel has placed on the record an order dated 29th March, 2007 passed by Mr. Justice Abhay S. Oka in C.A. (Stamp) No. 6720 of 2007 (in Appeal 5987 of

2007) on the Appellate Side. While granting rule on the Civil Application for stay of the execution of the decree, the learned Single Judge has granted ad interim relief in terms of prayer clause (a), subject to the Respondent herein (the Applicant before the Court in those proceedings) depositing the principal decretal amount with the Trial Court within a period of eight weeks from the date of the order. Counsel appearing for the Respondent has placed on the record a photocopy of a demand draft of the State Bank of India in the amount of Rs.94,200/- dated 17th April, 2007 in compliance with the directions contained in the order dated 29th March, 2007. Counsel appearing for the Respondent tenders an undertaking on behalf of the Respondent that the demand draft shall be deposited with the competent authority as directed forthwith. Since the decree has been stayed in the First Appeal and a demand draft towards the condition of deposit has been issued and which has been undertaken to be deposited, it would neither be appropriate nor proper to entertain the Company Petition for winding up at this stage. The proceedings for winding up, it is well settled, are not a mode of the execution of a decree of the Civil Court. However, it is clarified that the Petitioner would be at liberty to apply

for revival of the present proceedings, or if he is so advised to institute fresh proceedings if the order dated 27th March, 2007 is modified or vacated. The Company Petition is dismissed.